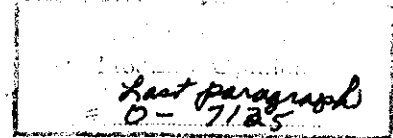




THE ATTORNEY GENERAL OF TEXAS

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN 11, TEXAS
April 29, 1952



Hon. Bascom Giles
Commissioner
General Land Office
Austin, Texas

Opinion No. V-1441

Re: Reinstatement of a
forfeited School Land
Purchase Contract by
one claiming title by
virtue of a tax judg-
ment and deed executed
before forfeiture of
the purchase contract.

Dear Sir:

Your request for an opinion of this office
reads in part as follows:

"This department desires your official opinion concerning the right of reinstatement of a forfeited School Land Purchase Contract by one claiming title by virtue of a tax judgment and deed, both executed prior to the forfeiture of the purchase contract by the Commissioner of the General Land Office."

Public land dedicated to the use and benefit of the permanent free school fund is not taxable by any taxing authority so long as title thereto remains in the State. Section 2, Article VIII, Constitution of Texas; Article 7150, V.C.S.; Pitts v. Booth, 15 Tex. 453 (1855).

However, by Article 7173, V.C.S., the State requires those holding public free school land under lease or contract of purchase to pay taxes upon their holdings. That article provides in part as follows:

"Property held under a lease for a term of three years or more, or held under

a contract for the purchase thereof, belonging to this State, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all purposes of taxation, as the property of the person so holding the same, except as otherwise specially provided by law. . . ."

The delinquent taxes for which judgment and subsequent sale were had herein undoubtedly were levied under authorization of the quoted provision. Having the authority to levy taxes upon the interest held by a purchaser under a School Land Purchase Contract, it must follow that the right to enforce payment of such taxes also exists in the taxing authority.

That such an interest is subject to sale under execution was determined in Martin v. Bryson, 71 S.W. 615 (Tex.Civ.App.1902, error ref.). In so holding, the court adopted the following statement from the second edition of Freeman on Executions:

"So one who purchases lands from a state under a contract which provides for certain payments, upon the making of which he will become entitled to a patent, and upon default in any of which he forfeits all rights under his contract, has a vendible interest in such lands prior to their forfeiture, and one which is subject to execution. The estate acquired under the levy on an execution is, of course, no better or more certain estate than that held by the judgment debtor, and remains liable to be defeated by the same execution sale. . . ."

The court then held as follows:

"We therefore conclude that as the interest of the appellee, Bryson, in this section of land, was such as he could sell to any person who would buy, regardless of whether such person occupied the land afterwards or not, it was a vendible interest and was subject to execution."

In Danciger v. State, 140 Tex. 252, 166 S.W. 2d 914 (1942), land held under a School Land Purchase Contract was said to be subject to sale under a judgment for taxes due against it.

It is well settled that under a School Land Purchase Contract title to the land remains in the State, and the purchaser has only the right to acquire it by complying with the conditions prescribed by statute. Williams v. Finley, 99 Tex. 468, 90 S.W.1087 (1906); State v. Elza, 109 Tex. 256, 206 S.W. 342 (1918); Perez v. Canales, 69 Tex. 674, 7 S.W. 507 (1888).

Where execution has been had for delinquent taxes on land held under such a purchase contract, the effect of a valid tax sale and deed is to divest the tax debtor of all right, title, and interest in and to the land described therein and to vest such right, title, and interest in the grantee of the tax deed. The only right which could be acquired under the tax deed is the right of the purchaser from the State to acquire the land from the State by complying with the conditions prescribed by statute.

Article 5326, V.C.S., provides in part as follows:

"If any portion of the interest on any sale should not be paid when due, the land shall be subject to forfeiture by the Commissioner entering on the wrapper containing the papers 'Land Forfeited,' or words of similar import, with the date of such action and sign it officially, and thereupon the land and all payments shall be forfeited to the State, and the lands may be offered for sale on a subsequent sale date. In any case where lands have heretofore been forfeited or may hereafter be forfeited to the State for non-payment of interest, the purchasers, or their vendees, heirs or legal representatives, may have their claims reinstated on their written request by paying into the Treasury the full amount of interest due on such claim up to the date of reinstatement, provided that no rights of

third persons may have intervened. The right to re-instate shall be limited to the last purchaser from the State or his vendees or their heirs or legal representatives. . . ."

We have found no Texas cases defining the limitations of the last-quoted sentence. However, it is well settled that statutes providing for forfeiture of rights under School Land Purchase Contracts must be strictly construed, while those statutes relieving from forfeiture of such rights must be liberally construed in favor of the owner at the time of forfeiture. Lovett v. Simmons, 29 S.W.2d 1021 (Tex. Comm. App. 1930); Cruzan v. Walker, 119 Tex. 189, 26 S.W.2d 908 (1930); Mound Oil Co. v. Terrell, 99 Tex. 625, 92 S.W. 451 (1906).

In Brooke v. Eastman, 17 S.D. 339, 96 N.W. 699 (1903), the Supreme Court of South Dakota had before it a statute providing for the purchase of public lands of South Dakota. After setting forth the conditions to be met by the purchaser of such lands, the statute provides: ". . . in that event only, will the said purchaser, his heirs, assigns, or other legal representatives, be entitled to a patent for the land herein described. . . ." (Emphasis added.) It was held that the interest of such a purchaser was subject to execution and sale for delinquent taxes and that if the execution and all other proceedings therein were regular, the interest of the purchaser from the State passed to the purchaser under the tax sale, and the tax sale vendee could compel the State to issue a patent to the lands so sold to him upon payment of the balance of the purchase price.

In view of the foregoing, and based upon the assumption that the tax judgment and deed were valid in every respect, it is our opinion that a claimant under such a valid tax judgment and deed executed before forfeiture of the purchase contract is within the class of persons having a right of reinstatement under Article 5326, V.C.S.

SUMMARY

A claimant under a valid tax judgment and deed executed before forfeiture of the purchase contract has the right of reinstatement of a forfeited School Land Purchase Contract.

APPROVED:

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WHH:bt

Yours very truly

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